



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

APPLICATION FOR LEAVE TO APPEAL BY STATE NO. 106 OF 2024

The State of Maharashtra
Through : Police Inspector,
Kranti Chowk Police Station,
Aurangabad, Dist.Aurangabad.Applicant

Versus

Vijaykumar Manikrao Deshmukh
Age : 57 years, Occu.: Service (Clerk),
R/o. Kesapuri Vasahat, House No.
CL-10, 79/5, Shivaji Nagar, CIDCO,
Aurangabad.Respondent

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APP for Appellant : Mr.N.R.Dayma
Advocate for Respondent: Mr.Ajinkya Joshi h/f. Mr. Sharad V., Natu

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 11 MARCH, 2026

PRONOUNCED ON : 12 MARCH, 2026

ORDER :

1. This is an application seeking leave to file appeal on behalf of State i.e. on account of acquittal of present respondent by Special Judge, (PC Act) (Court No.6), Aurangabad in Special Case No.18 of 2016 vide its judgment and order dated 28-08-2023.

2. Learned APP pointed out that, above special case is in consequence to crime registered on complaint received from one Amol Prabhakar Mundhe, an Assistant Engineer (Grade-II) whereby he reported that accused, Head Clerk in the Divisional Office of Majalgaon Project Division, Majalgaon, demanded bribe of Rs.5,000/- for clearing medical bill pertaining to father of complainant and for even releasing monthly salary of August, 2015. Learned APP submitted that, prompt complaint was received which was followed by arrangement of panchas, giving necessary instructions to complainant and panchas. That, thereafter, initially demand verification was got done by recording conversation in voice recorder. That, on getting satisfied, the Investigating Officer took further steps of planning trap and even getting it successful. According to learned APP, there was demand followed by acceptance. That, even sanction was obtained and the same was substantiated by examining Sanctioning Authority, but according to learned APP, trial ended up in acquittal on two grounds i.e. non-application of mind while according sanction and holding that there was no work at all with accused to attribute motive of bribe to him. That, such appreciation is incorrect and contrary to law and evidence available on record. That, prosecution has a good case on merits. Learned

APP sought reliance on the Judgment of Hon'ble Apex Court passed in the case of *Dashrath v. The State of Maharashtra* in Criminal Appeal arising out of SLP (Cri.) No.13997 of 2024, on the point of sanction, more particularly, paragraph 11 and 13 and prays for grant of leave.

3. In answer to above, learned counsel for respondent would justify the acquittal by pointing out that, here, very demand has not been cogently proved by prosecution. He pointed out that, both witnesses i.e. complainant and shadow pancha are speaking about accused making some gestures and there was no oral or verbal demand. That, even it has come in evidence and even admitted by prosecution witnesses like Sanctioning Authority that said work was not with accused so as to attribute motive to raise demand of bribe. For above reasons, he justifies the order of acquittal.

4. After considering above submissions and on going through papers including impugned order, it is emerging that one Amol Prabhakar Mundhe, an Assistant Engineer approached ACB on 25-06-2015 with a complaint that he had approached accused for clearing medical bill of treatment of his father and also on account of

non-receipt of salary for the month of August 2015. In this regard, when accused, a Head Clerk of the Divisional Office, allegedly told him that, office has received copy of sanction order and he would accordingly raise funds by issuing requisition letter and do the needful, but according to complainant, he was informed that Rs.5,000/- was required for the same. Therefore, he approached ACB with above complaint, which was followed by arrangement of panchas, giving necessary instructions, and initially getting verification of demand got done through voice recorder. Thereafter, shadow pancha and complainant were made to visit accused.

As regards to demand is concerned, as usual, evidence of complainant is crucial and there has to be corresponding corroboration from another crucial witness like shadow pancha. However, it is emerging from the evidence of complainant and shadow pancha that demand was said to be made by gestures. Thus, there is no oral or verbal demand of Rs.5,000/-. What gestures were made and in what form is not stated by both these witnesses. Further as pointed out by learned counsel for accused, complainant in his statement during Departmental enquiry has not uttered about demand made by accused. Therefore, the aspect of very demand comes under shadow of doubt. In umpteen judgments, the Hon'ble

Apex court has held that proof of demanding bribe is must and mere recovery of tainted currency is insufficient.

5. Further as pointed out, there seems to be communication dated 06-10-2015 at exh.18, which is issued by Executive Engineer and said commutation shows that medical bill of father of complainant was sanctioned on 06-10-2015. However, trap is shown to be laid on 24-09-2015. Hence, there is doubt whether prior to the sanction itself, accused would have assured getting the work done and putting up demand for the same. Further, Investigating Officer seems to have admitted that accused was neither authority competent to accord sanction to medical bill or raise funds from consolidated funds. Further PW4 Rokde admitted in cross-examination that order passed by Aurangabad office could not be forwarded for further action unless it is registered with Inward section of Majalgaon Division. Resultantly, there was no work with accused on the date of alleged demand. Therefore, even motive to put up demand of bribe is not free from doubt.

6. Acquittal is shown to be granted for want of due application of

mind while according sanction. This witness PW1 Nagendra Vasantryao Shinde is examined at exh.15 and he deposed about receiving papers, going through the same and noticing that some medical bills of treatment of complainant were pending payment and from conversation of accused and complainant, it revealed that there was settlement of Rs.5,000/- for clearing the bill. But while under cross-examination, this witness has admitted that he did not refer to those documents in his sanction order. He also seems to have admitted that on 06-10-2015, Executive Engineer sanctioned the medical bill of father of complainant and further admitted that alongwith salary of complainant, salary of other three officials was also withheld by the Executive Engineer. When documents revealed that medical bill of father of complainant was not sanctioned on the date of trap i.e. 24-09-2015, there was no question of accused putting up demand for clearing the bill. Had the Sanctioning Authority verified these documents and compared with investigation papers, probably above aspects would have come to his notice and probably sanction would not have been granted.

7. To sum up, here, at the threshold *sine qua non* of demand is not proved as prosecution witnesses speak about demand being

raised by way of gestures from which no specific meaning could be drawn. Witnesses are not speaking about exact nature of gestures made by hand. Therefore, when demand itself is not proved, even if there is recovery, it is of no significance. Even evidence on record creates doubt about competence of accused to clear or sanction the medical bills and salary of accused.

8. Learned APP has placed on record above referred judgment in the case of *Dashrath* (supra) and on going through paragraph 11 and 13, it is emerging that general proposition has been laid that there is no legal impediment to prosecute public servant for want of sanction. As regards to observation of Hon'ble Apex Court in paragraph 13 is concerned, it pertains to omissions, errors and irregularity while granting sanction. Here, it is not so. Here, competent authority has not got itself satisfied whether it was a case for according sanction as firstly, he himself and the Investigating Officer having admitted that accused was not competent to either sanction medical bills or release salary of accused. Therefore, said ruling is of no avail to the prosecution.

In view of the aforesaid discussion, this Court is of the opinion that the application deserves to be rejected. Accordingly, following order is passed :

ORDER

Application is rejected.

(ABHAY S. WAGHWASE)
JUDGE

SPT